

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 4, 2021

Hearing Room 301

1:00 PM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

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Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#1.00 Confirmation hearing re chapter 11 plan of reorganization
fr. 10/21/21(stip)

Stip to continue filed 10/26/21

Docket 117

***** VACATED *** REASON: Order approving stip entered 10/26/21.
Hearing continued to 11/18/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 9/10/20; 4/22/21; 6/3/21; 7/8/21; 8/26/21; 10/21/21(stip)

Stip to continue filed 10/26/21

Docket 1

***** VACATED *** REASON: Order approving stip entered 10/26/21.
Hearing continued to 11/18/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

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1:21-10736 Top Flight Investments, LLC

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 6/24/21

Docket 1

***** VACATED *** REASON: Order of dismissal entered 10/5/2021.
[Doc#78]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Top Flight Investments, LLC

Represented By
Matthew Abbasi

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1:16-13382 Christopher Sabin Nassif

Chapter 11

#3.10 Confirmation hearing re debtor's second amended chapter 11 plan of reorganization

fr. 10/28/21

Docket 256

Tentative Ruling:

Confirm second amended Chapter 11 Plan (the "Plan") dated June 1, 2020 [doc. 256], as modified by stipulated plan treatment agreements between Christopher Sabin Nassif ("Debtor") and (1) Nationstar Mortgage LLC (d/b/a Mr. Cooper and The Bank of New York Mellon) [docs. 322 and 347], (2) the California Franchise Tax Board [doc. 327], and (3) the Internal Revenue Service [doc. 333]. No later than **February 24, 2022**, Debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States Trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) and **must be supported by evidence**.

A postconfirmation status conference will be held on **Thursday, March 10, 2022 at 1:00 p.m.**

Debtor must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

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CONT... Christopher Sabin Nassif

Chapter 11

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1:16-13382 Christopher Sabin Nassif

Chapter 11

#3.20 Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip); 7/19/18(stip);
8/16/18; 10/4/18(stip); 11/8/18; 2/7/19(stip); 5/16/19(stip); 8/8/19(stip);
12/12/19; 1/23/20; 3/26/20(stip); 4/9/20; 6/25/20; 8/13/20; 10/8/20(stip);
12/10/20(stip); 2/18/21; 9/23/21; 10/28/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

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1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#4.00 Creditor's motion to dismiss under 11 U.S.C. § 1112(b)

Docket 199

Tentative Ruling:

The Court will continue this hearing to **1:00 p.m. on November 18, 2021**, to be held with the Court's Order to Show Cause why this case should not be dismissed or converted [doc. 188].

Appearances on November 4, 2021 are excused.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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1:21-10500 Restorations

Chapter 11

#5.00 Motion to dismiss or convert

Docket 92

***** VACATED *** REASON: Order entered 10/15/21 continuing hearing
to 11/18/21 at 1:00 p.m. [Doc#100]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

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1:21-10503 BAIC

Chapter 11

#6.00 Application of Debtor to employ the Law Offices of Stanley Bowman
as general counsel for the estate

Docket 113

Tentative Ruling:

Regarding the Court's jurisdiction to decide the *Application of Debtor to Employ the Law Offices of Stanley Bowman as General Counsel for the Estate* (the "Second Bowman Employment Application") [doc. 113], on October 7, 2021, a notice of appeal [doc. 109] of the Court's earlier Order denying the debtor's first application to employ the Law Offices of Stanley Bowman [doc. 106] was filed, i.e., *before* the filing of the Second Bowman Employment Application. Nevertheless, it appears that the Court retains jurisdiction to rule on the Second Bowman Employment Application. *See Rains v. Flynn (In re Rains)*, 428 F.3d 893, 904-05 (9th Cir. 2005) ("a bankruptcy court retains jurisdiction to consider a timely motion under Fed. R. Bankr. P. 9023 to alter or amend the judgment, even when the motion is filed subsequent to a notice of appeal," *citing* Fed. R. Bankr. P. 8002(b)).

For the reasons set forth in the U.S. Trustee's objection [doc. 135], the Court will deny the Second Bowman Employment Application. The Second Bowman Employment Application and the Declaration of Larry D. Fieselman [doc. 147] do not explain how any mentoring by Mr. Fieselman will ensure that Mr. Bowman will provide competent chapter 11 representation to the debtor, in light of Mr. Bowman's history of frequently representing chapter 11 debtors in cases that were dismissed, prior to the debtor's confirmation of a plan, and often with a bar against refiling.

The United States Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

BAIC

Represented By
Stanley D Bowman

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1:21-10503 BAIC

Chapter 11

#7.00 Motion to dismiss or convert

Docket 114

Tentative Ruling:

In the motion, the movant contends that the debtor cannot confirm a chapter 11 plan unless the debtor provides for payment of the movant's debt, in full, on the effective date of the plan. However, because the real property is not the "debtor's principal residence," the anti-modification clause of 11 U.S.C. § 1123(b)(5) does not apply to this case. In fact, under 11 U.S.C. § 1123(a)(5)(H), the chapter 11 plan may provide for the "extension of a maturity date...."

The cases cited by the movant are either inapplicable or support the opposite conclusion. In *In re Seidel*, 752 F.2d 1382 (9th Cir. 1985), the Ninth Circuit Court of Appeals addressed whether the debtor's chapter 13 plan impermissibly modified the rights of a secured creditor with a lien against the debtor's principal residence. Once again, as the property at issue is not "the debtor's principal residence," the anti-modification clause of 11 U.S.C. § 1123(b)(5), which mirrors the anti-modification clause at issue in *Seidel*, does not apply to this case.

In *In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988), the Court of Appeals addressed whether the debtor could avoid the consequences of default, such as a higher post-maturity interest rate, by paying the secured creditor in full on the effective date of a plan; the pertinent issue before the Court of Appeals was whether such a payment qualified as a "cure" for purposes of the Bankruptcy Code. *Entz-White*, 850 F.2d at 1340. As part of this determination, the Court of Appeals referenced 11 U.S.C. § 1124, "which determines whether a party is impaired by a Chapter 11 reorganization plan." *Id.* The Court of Appeals held that payment of the debt in full, on the effective date, was a "cure" for purposes of 11 U.S.C. § 1124 and, as a result, the secured creditor was unimpaired. *Id.*, at 1342-43. The *Entz-White* court did not hold that loans that matured prepetition could not be paid over a period of time. Rather, the Court of Appeals addressed whether the proposed payment on the effective date rendered the claim unimpaired.

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Chapter 11

Thus, if the claim is not protected by the anti-modification provision of 11 U.S.C. § 1123(b)(5), a plan that proposes treatment of a claim over a period of time does not, in and of itself, run afoul of the Bankruptcy Code. Rather, in accordance with 11 U.S.C. § 1124, such treatment may designate the claim impaired with a right to vote on the chapter 11 plan. The debtor then must satisfy the confirmation requirements set forth in 11 U.S.C. § 1129.

In light of the above, the Court will not dismiss or convert this case, at this time, based simply on the debtor's proposed treatment to pay the movant's claim in full, subsequent to the effective date of the debtor's chapter 11 plan.

As to the other issues raised in the motion, at this time, the Court is unlikely to dismiss or convert this case based on the debtor's belated filing of its chapter 11 plan and disclosure statement. On the other hand, based on this corporate debtor's ongoing lack of counsel, the Court may dismiss this case, in accordance with Local Bankruptcy Rule 9011-2(a), ***if the Court currently has jurisdiction to do so, given the pendency of the appeal regarding the employment of counsel. See Neary v. Padilla (In re Padilla)***, 222 F.3d 1184, 1189-90 (9th Cir. 2000)(bankruptcy court divested of jurisdiction to grant debtor discharge and close chapter 7 case, while appeal of earlier order to dismiss petition as being filed in bad faith was pending; "The Trustee's timely filing of its notice of appeal of the BAP's decision to [the Court of Appeals] conferred jurisdiction on the [Court of Appeals] and divested both the BAP and the bankruptcy court of control over those aspects of the case involved in the appeal.").

Party Information

Debtor(s):

BAIC

Represented By
Stanley D Bowman

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1:21-10503 BAIC

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 5/20/21; 10/14/21

Docket 1

Tentative Ruling:

What is the status of the debtor's refinancing to payoff the secured claim of Harlan Helvey [Claim 3-1]? Based on the "Conditional Loan Quote," dated September 30, 2021, which the debtor has submitted [doc. 127, Ex. H], almost all of the requirements for the putative \$275,000 loan to be made are outstanding.

The Court will set a deadline of January 31, 2022 for the debtor to confirm a chapter 11 plan, assuming that the Court does not convert this case to one under chapter 7, or dismiss this case as a result of the corporate debtor's lack of counsel, before that date.

If the Court continues this status conference, the debtor(s) in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to confirming a chapter 11 plan, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order.

Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

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1:21-10844 Michael Chulak

Chapter 7

#9.00 Debtor's objection to proof of claim 12-2 filed by claimant Norman Malk

Docket 69

Tentative Ruling:

Overrule, without prejudice.

I. BACKGROUND

On May 8, 2021, Michael Chulak ("Debtor") filed a voluntary chapter 11 petition. On June 2, 2021, the Court entered an order converting Debtor's case to a chapter 7 case [doc. 30].

In his Statement of Financial Affairs [doc. 1], Debtor indicated that, within the four years preceding the petition date, Debtor owned at least 5% of the voting share of Coast Management.net ("Coast"). On July 13, 2021, Norman Malk filed an amended claim against the estate, asserting an unsecured claim in the amount of \$250,000. In support of his claim, Mr. Malk attached a declaration stating that, while he was employed by Coast, Mr. Malk was injured in a work-related motor vehicle accident. Declaration of Norman Malk ("Malk Declaration"), ¶ 1. Mr. Malk further noted that he filed a California Workers' Compensation Claim or Application against Coast, but was notified that Coast did not have workers' compensation insurance. Malk Declaration, ¶¶ 4-5. Mr. Malk also attached an order, dated June 4, 2021 (the "Joinder Order"), joining Debtor as a defendant in his action before the California Workers' Compensation Appeals Board (the "WCAB").

On October 3, 2021, Debtor filed an objection to Mr. Malk's claim (the "Objection") [doc. 69]. In the Objection, Debtor asserts that the Joinder Order was entered in violation of the automatic stay. As such, Debtor asserts that the Joinder Order is null and void and, as a result, the Court should disallow Mr. Malk's claim.

II. ANALYSIS

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in

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Michael Chulak

Chapter 7

interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted). "If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Pursuant to 11 U.S.C. § 362(a)(1), "a petition... operates as a stay, applicable to all entities, of... the commencement or continuation... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." "[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)).

Here, the WCAB issued the Joinder Order postpetition. As such, in accordance with § 362(a)(1), the Joinder Order is void. [FN1]. However, the void Joinder Order is not a basis to disallow Mr. Malk's claim. Although Debtor is no longer a party before the WCAB, Mr. Malk timely filed a claim against the estate. Mr. Malk's claim is not exclusively based on the Joinder Order; rather, Mr. Malk supported his claim with a declaration and exhibits describing the nature of his workers' compensation claim against the estate.

In the Objection, Debtor did not address the merits of Mr. Malk's claim. Debtor

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CONT... Michael Chulak

Chapter 7

merely asserted that the Joinder Order is void. As such, Debtor did not "come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039. Consequently, the Court will not disallow Mr. Malk's claim.

III. CONCLUSION

The Court will overrule the Objection, without prejudice.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. In fact, as noted by Debtor, the WCAP already rescinded the Joinder Order.

Party Information

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro
Candice Candice Bryner

Trustee(s):

David Seror (TR)

Represented By
Jessica Wellington

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1:21-11098 John Carmen Esposito

Chapter 7

#10.00 Motion for order extending time for the Chapter 7 Trustee and the United States Trustee to file a complaint to object to debtors discharge (11 U.S.C. § 727)

Docket 52

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

John Carmen Esposito

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

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2:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#11.00 Status conference re: chapter 11, subchapter V case

fr. 3/25/21; 4/8/21; 5/6/21; 6/17/21; 8/12/21; 9/23/21

Docket 1

***** VACATED *** REASON: Order Dismissing Case entered 10/27/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton